

BEFORE THE
ILLINOIS COMMERCE COMMISSION

TDS METROCOM, INC.) DOCKET NO.
) 01-0338
Petition for Arbitration of)
Interconnection Rates, Terms and)
Conditions and Related Arrangements)
with Illinois Bell Telephone Company)
(Ameritech Illinois) pursuant to)
Section 252(b) of the)
Telecommunications Act of 1996.)

Springfield, Illinois
June 22, 2001

Met, pursuant to notice, at 9:30 A.M.

BEFORE:

MR. MICHAEL WALLACE, Examiner

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SULLIVAN REPORTING COMPANY, by
Carla J. Boehl, Reporter
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1 PROCEEDINGS

2 EXAMINER WALLACE: Pursuant to the direction
3 of the Illinois Commerce Commission I now call Docket
4 01-0338. This is the matter of the arbitration
5 between TDS Metrocom, Inc., and Illinois Bell, Inc.,
6 doing business as Ameritech Illinois.

7 May I have appearances for the record,
8 please.

9 MR. MACBRIDE: Owen MacBride, 6600 Sears
10 Tower, Chicago, Illinois 60606, appearing on behalf of
11 TDS Metrocom, Inc.

12 MR. HEALY: Peter Healy, 22 East Mifflin,
13 Madison, Wisconsin 53701, appearing on behalf of TDS
14 Metrocom.

15 MR. FRIEDMAN: On behalf of Ameritech
16 Illinois, Dennis Friedman and Michael Sullivan, Mayer,
17 Brown and Platt, 190 South LaSalle Street, Chicago,
18 60603.

19 MS. STEPHENSON: On behalf of Staff of the
20 Illinois Commerce Commission, Mary Stephenson,
21 Margaret Kelly and Tom Stanton, 160 North LaSalle,
22 Suite C-800, Chicago, Illinois 60601.

1 EXAMINER WALLACE: Thank you. Let the record
2 reflect there are no other appearances at today's
3 hearing.

4 Left over from yesterday was the motion
5 to admit the transcripts from the Wisconsin
6 arbitration involving TDS and Ameritech. Prior to
7 going on the record we started to discuss that
8 briefly. Mr. Friedman indicated he wanted to make an
9 argument for the record. So please go ahead.

10 MR. FRIEDMAN: What Ameritech Illinois would
11 propose this morning is this, that we mark -- and I
12 will ask the reporter to mark the two volumes of
13 transcripts for identification, and that the question
14 of admitting portions of the transcript be held with
15 the case and addressed in the HEPO.

16 What I have in mind is this. There
17 clearly, I think, is admissible evidence in those
18 transcripts, evidence which is not hearsay because
19 uttered by a party opponent, and evidence which is
20 indisputably relevant. The suggestion would be that
21 we mark the transcripts for identification, that the
22 parties use such portions of the transcript as they

1 see fit and as they think are admissible in their
2 briefs, and that the Hearing Examiner then either
3 admit or not admit those portions of the transcript
4 based on the particulars of the situation and an
5 individualized determination of what in the Hearing
6 Examiner's view is admissible or not. I think that's
7 a much better way of dealing with this than doing it
8 in the abstract.

9 And I would add two more points. One is
10 that these arbitration awards typically wind up being
11 challenged in federal district court. To deny the
12 admission of this evidence certainly has the
13 potential, has the potential, to be reversible error
14 if one party -- well, if we were to lose an issue and
15 then point out to the district court that there was
16 probative evidence on the issue that the Commission
17 didn't take into consideration because it was
18 excluded.

19 On the other hand to do as we are
20 proposing, at least at the moment, has no potential to
21 create error. And, indeed, I would have said even at
22 the time that we were proposing to admit the

1 transcripts in their entirety at this point, that to
2 grant that motion could not constitute error. The
3 error could only come later when and if the Commission
4 actually used this material as the basis for its
5 determination.

6 The final point that I would make is that
7 as part of the discussions between TDS and Ameritech
8 about the waiver of cross on witnesses, we reached
9 what I understood to be an agreement that in instances
10 where TDS waived cross on an Ameritech witness and
11 Ameritech in exchange waived cross of TDS witnesses on
12 those issues, the Wisconsin transcript would be
13 admissible to that extent, that is, on those issues.

14 And actually, I oversimplified, I have in
15 front of me Peter Healy's e-mail to me, and I won't
16 read the whole thing, but it says without waiving
17 objections or arguments as to relevance or probative
18 values, which I think he is reserving for his brief,
19 TDS will not object to introducing into the record
20 those portions of the Wisconsin transcript, and then
21 it goes on and on and it pertains to certain issues
22 which he lists, and those were the issues on which we

1 waived cross for these purposes.

2 Now, I think Peter may, may or may not,
3 say, well, we Ameritech Illinois kind of took that
4 deal off the table when we went for the whole of the
5 transcript yesterday. But in any event that's another
6 piece of this. I think that's also appropriately
7 dealt with by the approach I am suggesting this
8 morning.

9 EXAMINER WALLACE: Mr. Healy?

10 MR. HEALY: Well, addressing the points in
11 reverse order, I think Mr. Friedman is exactly right.
12 That was a proposal we were making that was different
13 than what Ameritech had talked about in terms of
14 introducing only the cross on waived witnesses. There
15 was never really any agreement as to how this would be
16 dealt with. We were discussing it; I will admit that.
17 That was a proposal we made. But I don't feel that
18 any agreement was ever reached as to how that would be
19 dealt with. And at this point, especially given --

20 EXAMINER WALLACE: Excuse me, Mr. Omoniyi,
21 you need to slide around, please, sir. Thank you very
22 much.

1 MR. HEALY: And especially given that Staff
2 has joined an objection to it, I don't really feel
3 that that is on the table at this point. So there
4 really was no agreement on it.

5 And I think the second point is, at least
6 in some of the testimony that was filed, Ameritech
7 accused TDS of taking the position that it was better
8 to ask forgiveness than permission, and I know that's
9 where we are headed here. Once that's all been dumped
10 in the record, it's sort of hard to ring the bell.
11 And if it is better, more properly excluded, this is
12 the time to do it.

13 EXAMINER WALLACE: Ms. Stephenson?

14 MS. STEPHENSON: We would just renew our
15 objection and too elaborate a little more on this.
16 This admitting the entire transcript from Wisconsin is
17 highly prejudicial to Staff. The laws that the
18 Wisconsin panel decided on this order, that is what
19 the witnesses, all them have testified to, Wisconsin
20 law. They were not testifying under Illinois law. I
21 don't know -- they could be very similar. However, we
22 are now here under Illinois law and Illinois rules.

1 And that is how Staff is viewing this case. That is
2 the position we are taking and that is how the
3 witnesses have testified. By allowing the Wisconsin
4 transcript in, it's bringing in a whole different
5 element. It will really be an extreme disadvantage to
6 Staff.

7 EXAMINER WALLACE: Okay. One brief response.

8 MR. FRIEDMAN: Very briefly, again, what we
9 are requesting this morning is not that the transcript
10 be admitted into the record. Rather, we want to have
11 it marked, let the parties use such pieces as they may
12 think are appropriately used, and let the Hearing
13 Examiner then decide whether those pieces should be
14 admitted to the record as part of the HEPO.

15 Now, you talk about Illinois law versus
16 Wisconsin law. The simple fact of the matter is, if
17 it happened, for example, in Wisconsin that I asked
18 Mr. Kaatz a question like do you have any FX customers
19 anywhere and if he said no, I mean, that should be
20 admissible. Now, Peter Healy might say, well, that
21 may have changed since, for example.

22 MR. HEALY: Or he could have asked him here.

1 MR. FRIEDMAN: Or I could have asked him
2 here. Or I may have decided here, in light of the
3 fact that we agreed in order to economize not to bring
4 in some of our witnesses and to waive cross, not to
5 ask him the question again. So, yes, there may be
6 some instances where things are different in Wisconsin
7 and Illinois, and something that was said in Wisconsin
8 just doesn't apply here. And I would be taking my
9 chances if I tried to use that. But on certain
10 questions and answers -- you know, another example
11 would be what does this language mean that you are
12 proposing. If it happens to be the same language
13 here, that should come in.

14 EXAMINER WALLACE: Well, it certainly sounds
15 like that there was not an agreement among everyone
16 concerning use of the cross from Wisconsin, number
17 one. So that presents a problem. Number two, it is
18 another -- and in that regard I am not sure what
19 probative value it has for Illinois. I am not hearing
20 that anyone was denied an opportunity to cross any of
21 the particular witnesses who testified in Wisconsin,
22 and in fact I think they were asked -- some were asked

1 questions concerning their responses in Wisconsin. So
2 I am not sure what we gain by bringing those
3 transcripts into our record, and I am not sure what
4 probative value they have.

5 I don't disagree that certainly if you
6 look at the Federal Rules of Evidence there certainly
7 is potentially an admission. There probably could be
8 a lot of cases out there saying they are not, but at
9 least on the surface I wouldn't disagree with your
10 characterization. But in terms of value to our
11 proceeding, I don't know that they have that much.

12 So -- and to the extent that I don't want
13 other parties surprised at this late date,
14 Mr. Friedman, if you have some inkling of what or how
15 much you would want to cite and seek admission in this
16 case, maybe that might be helpful.

17 MR. FRIEDMAN: That's what I had in mind.
18 And all I would like to do this morning, if we could,
19 and I will do that now with your permission, is have
20 these marked with numbers for identification. I can
21 tell you certainly, although I don't know what
22 particular portions we might use, that it would be

1 very few, I am sure. And the thought is that we use
2 them and then seek actual admission at that point.

3 MR. HEALY: If we are even going to start
4 down that road, I think it should be identified in
5 advance of the brief. I don't think we should be
6 apprised as to what this essentially new evidence is
7 for the first time at the time we see the brief.

8 EXAMINER WALLACE: Yeah, I tend to agree. So
9 I am going to deny the original motion to mark and
10 admit the transcripts from the Wisconsin arbitration
11 panel, and I am going to deny the motion to cite those
12 in a brief in this Commission and seek admission of
13 certain portions.

14 MR. FRIEDMAN: I'm sorry, you are going to --

15 EXAMINER WALLACE: I am denying both your
16 motions. I am not sure which one was still on the
17 table.

18 MR. FRIEDMAN: Well, may we have these
19 marked? I intend to do that so the record is
20 complete. Having them marked for identification does
21 not make them --

22 EXAMINER WALLACE: All right. We can mark

1 them for identification.

2 MR. FRIEDMAN: In other words, if an error is
3 being made -- so we will mark them as, are we on
4 Ameritech Illinois 10?

5 EXAMINER WALLACE: I believe so, yes.

6 (Whereupon Ameritech Illinois
7 Exhibits 10 and 11 were
8 marked for purposes of
9 identification as of this
10 date.)

11 MR. FRIEDMAN: I also will ask the reporter
12 to mark as Ameritech Illinois Exhibit 12 a true and
13 correct copy of an e-mail from Peter Healy to Dennis
14 Friedman dated June 20, 2001.

15 MR. HEALY: I would object to that.

16 MR. FRIEDMAN: I am just having it marked. I
17 am going to move for admission in just a second.

18 EXAMINER WALLACE: I think this is highly
19 irregular. These are discussions that occurred
20 between you and Mr. Healy. I know many parties were
21 also copied, but these aren't proper evidence at all.

22 Let's go off the record.

1 (Whereupon there was then had
2 an off-the-record
3 discussion.)

4 EXAMINER WALLACE: Back on the record. We
5 have -- are we at Ms. Bates?

6 MR. SULLIVAN: Ameritech Illinois calls
7 Ms. Bates, Theresa Bates.

8 (Whereupon Ameritech Illinois
9 Exhibits 12 and 13 were
10 marked for purposes of
11 identification as of this
12 date.)

13 THERESA BATES
14 called as a Witness on behalf of Ameritech Illinois,
15 having been first duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SULLIVAN:

19 Q. Ms. Bates, could you state your complete
20 name and address for the record.

21 A. Theresa M. Bates, 3 Bell Plaza, Dallas,
22 Texas 75202, Room 720H5.

1 Q. And due to the size of the room, if you
2 could just speak up a little. You have two pieces of
3 testimony, direct testimony and reply testimony?

4 A. Yes, I do.

5 MR. SULLIVAN: I offer Ms. Bates for cross
6 examination.

7 EXAMINER WALLACE: Mr. Healy?

8 CROSS EXAMINATION

9 BY MR. HEALY:

10 Q. Good morning.

11 A. Good morning.

12 Q. I would like to ask you about two areas
13 in your testimony. The first is Issue TDS-93, and
14 your testimony there is that Ameritech seeks to add
15 language to the agreement that says that the
16 collocater may be required to pay additional
17 application fees if applicable for amended
18 applications, is that correct?

19 A. Yes.

20 Q. Where in the pricing index does it
21 indicate which fees are applicable for amended
22 applications and which are applicable for regular

1 applications?

2 A. I am not specifically aware of the rates
3 related to that, although I could get that
4 information.

5 Q. Let me ask the question this way. If
6 there were a separate rate for amended applications,
7 that would be contained in the Pricing Appendix?

8 A. Again, I would have to check.

9 Q. My question is -- all right, let me ask
10 it this way then. Where else would I look in this
11 agreement to find out what the applicable rate is?
12 The applicable fees, I'm sorry.

13 A. My testimony is certainly directed
14 towards the terms and conditions. And as far as
15 rates, that would be something I would have to again
16 research, and I could provide to the Staff and TDS.

17 Q. Would the pricing for this particular fee
18 that you say would be applicable be contained outside
19 of the agreement?

20 A. Actually, it would be in the
21 Interconnection Agreement, but my testimony today is
22 just specific to terms and conditions on collocation.

1 So I wasn't prepared to discuss rates.

2 Q. And I am not talking about what the rate
3 is. I am just talking about when you say the problem
4 with Mr. Lawson's testimony is that he ignores the
5 term "if applicable." And what I am trying to do is
6 find out how we know when it's applicable and how we
7 know when it's not applicable.

8 A. I could probably give you an example.

9 Q. I am saying in the agreement, is there
10 somewhere I can look?

11 A. Oh, in the agreement? Can you direct me
12 in the agreement to that one?

13 Q. I believe it's Section 10.5 of the
14 Collocation Appendix.

15 A. Okay, the last sentence?

16 Q. Yes.

17 A. The interval and the starting date?

18 Q. The last sentence, "The collocator may
19 also be required to pay additional"?

20 A. Fees.

21 Q. And the disputed language is "application
22 fees, if applicable," is that correct?

1 A. The disputed language is "costs actually
2 incurred in the" --

3 Q. Well, let me back up then. Ameritech's
4 position is that the language should read "additional
5 application fees, if applicable." TDS has proposed
6 replacing that with "additional costs actually
7 incurred"?

8 A. Correct.

9 Q. And what I am trying to figure out is
10 where I can find the application fees that you say are
11 applicable, where in this agreement?

12 A. I would think they would be in the rate
13 tables, but I don't know that, and I would have to
14 check that.

15 Q. What other possible places would I find
16 those application fees if they weren't in the rate
17 tables?

18 A. I don't know the answer to that.

19 Q. The other issue I would like to ask you
20 about is Issue 101 and 102. And you have provided
21 testimony that disputed Mr. Lawson's citation to the
22 CLEC and also the Staff witnesses' citation to that,

1 is that a fair summary?

2 A. Are you saying that I disputed the
3 handbook language?

4 Q. You indicated that their use of the
5 handbook was not appropriate to determine what that
6 notice interval should be, is that correct?

7 A. That the citing of that language wasn't
8 inclusive of what was actually in the handbook.

9 Q. The handbook does indicate a 20-day
10 notice period, is that correct?

11 A. Actually, it's a 20-day notice where
12 feasible and that was not part of the testimony that
13 Mr. Lawson provided. I mean, it was -- let me restate
14 that. It was actually -- when he quoted that, it
15 wasn't part of his request when he asked for the 20
16 days. He didn't include "where feasible;" he just
17 said 20 days.

18 Q. And the language proposed by Ameritech is
19 for five days for construction projects and ten days
20 for major construction projects and ten days for
21 projects related to power plant, is that correct?

22 A. Yes.

1 Q. This same issue was raised in Wisconsin;
2 you are aware of that?

3 A. Yes.

4 Q. And that arbitration was held in January
5 of this year?

6 A. Yes.

7 Q. And between January and now, Ameritech
8 has not changed their CLEC handbook to say five days
9 for major projects and ten days for electric-related
10 projects, have they?

11 A. Not necessarily. We actually have a
12 handbook that applies to multiple states, multiple
13 CLECs, and is much generic. And you can see that
14 stating that 20 days where feasible is slightly
15 different than five days, committing to a five-day
16 interval and a ten-day interval. So the language for
17 Ameritech Illinois is a commitment to deliver those
18 notices within the five and ten-day increment, where
19 in the handbook it's 20 days if feasible.

20 Q. So my question is, the handbook has
21 not -- the language in the handbook has not changed
22 between January and today?

1 A. Because it applies to more than one
2 state, yes.

3 Q. That's fine. I just wanted to make sure
4 that that is still what the handbook says.

5 A. Yes.

6 Q. And are you familiar with the documents
7 that were produced by Ameritech in response to our
8 data request on this issue, the SBC Power Engineering
9 Forecast Method and Procedure, and the SBC Wire Center
10 Planning Methods and Procedures? Are you familiar
11 with those documents?

12 A. Somewhat familiar.

13 Q. And those are fairly extensive
14 descriptions of the SBC power -- or I am sorry, SBC
15 planning process for their central office space, is
16 that correct?

17 A. Planning and forecasting.

18 Q. And is it Ameritech's position that even
19 with the extensive processes and -- let me back up one
20 more question. This is a process that Ameritech
21 Illinois follows today, is it not?

22 A. That's my understanding.

1 Q. And even with this extensive process that
2 has been put into place, is it Ameritech's position
3 that nobody in Ameritech knows more than five days in
4 advance when there is going to be a major construction
5 project in the central office?

6 A. I think that you can say that on occasion
7 we know more frequently or we know, and occasionally
8 we don't. It depends on the vendors. Sometimes
9 vendors show up without calling that are doing work.

10 Q. Those are vendors that are under the
11 control of Ameritech, right?

12 A. Whether they are working for a CLEC or
13 whether they are work for us. Are you referencing
14 just all of our work or other collocators?

15 Q. Just Ameritech's work.

16 A. Just Ameritech's work? Oh, yes,
17 definitely.

18 MR. SULLIVAN: That's all I have.

19 EXAMINER WALLACE: Ms. Stephenson?

20 CROSS EXAMINATION

21 BY MS. STEPHENSON:

22 Q. Good morning, Ms. Bates.

1 A. Good morning.

2 Q. Just kind of let you know what we are
3 going to do here with Staff, just so you don't think
4 we are double teaming you. My co-counsel and I have
5 some questions for you; we divided things up kind of
6 according to issues. So I am going to be addressing
7 Issue 33 and Issue 101 and 102. I have a few
8 questions. And then my co-counsel has some questions
9 for you on Issue 66. So this is in no way like trying
10 to double team here.

11 So with regard to Issue 33 and on page --
12 now, I am dealing with -- I believe this is your old
13 testimony because I don't know --

14 MR. SULLIVAN: You want the corrected
15 testimony?

16 Q. I don't know if the page numbers are
17 going to change. In your old testimony it is page 6,
18 lines 21 through 24, where you talk about terms and
19 conditions for collocation versus terms and conditions
20 for interconnection.

21 A. That's approximately in that area. I
22 think we are okay.

1 Q. Would you agree that collocation is a
2 form of interconnection?

3 A. No, I don't.

4 Q. You don't?

5 A. We have methods of interconnection and
6 methods of access to UNEs. I guess, collocation --

7 Q. I am sorry, I am having a hard time
8 hearing. I am sorry.

9 A. Just a moment. In methods of
10 interconnection there are methods of interconnection
11 that are in the contract in network interconnection
12 methodd, and then as a separate appendix -- that's the
13 Appendix NIM, that are interconnection methods. And
14 then there are methods that are access to UNEs which
15 was talked about yesterday in Mr. Lawson's testimony,
16 and then there is collocation. So I guess I am a
17 little bit confused.

18 Q. So collocation is used for
19 interconnection and access to UNEs, right?

20 A. It's used for interconnecti on and access
21 to UNEs. I guess I misstated that.

22 Q. Okay. Could you specify the differences

1 in terms and conditions for collocation versus terms
2 and conditions for interconnection?

3 A. I could speak to terms and conditions for
4 collocation. My testimony on terms and conditions for
5 interconnection, I probably need to refer to one of
6 our interconnection -- I mean I could probably answer
7 some basic questions about interconnection, but it's
8 not my testimony that that's what I am here to testify
9 for.

10 Q. Could you -- I mean, if you know
11 basically the basic differences? If not, that's okay.

12 A. The difference between collocation and
13 interconnection?

14 Q. Just the conditions.

15 MR. SULLIVAN: I am going to object to the
16 question. I think Ms. Bates testified that there are
17 a number of different methods of interconnection,
18 collocation being one of them. Are you asking her to
19 compare collocation as a method of interconnection
20 versus one of the other methods of interconnection?
21 And if so, which one?

22 MS. STEPHENSON: In her testimony she said

1 there was a difference, so I just wanted her to
2 specify those differences.

3 EXAMINER WALLACE: Well, the objection is
4 overruled. Ms. Bates?

5 WITNESS BATES: I am sorry, could you repeat
6 the question?

7 Q. I just wanted you to give the basic
8 differences in terms of conditions for collocation
9 versus terms and conditions for interconnection. I
10 believe you just referenced it at page 6 of the
11 testimony that I have, right at the bottom. You said
12 such an option is available under the terms and
13 conditions for interconnection rather than the terms
14 and conditions for collocation.

15 A. Give me a moment and let me read this.

16 Q. I am sorry, I might have -- maybe your
17 counsel -- in our records it's on page 6, 21 to 23. I
18 don't know if that's the correct area of the
19 testimony.

20 MR. SULLIVAN: That is.

21 WITNESS BATES: I was speaking in this
22 particular paragraph to interconnection as an

1 interconnection agreement, and the terms and
2 conditions in an interconnection agreement include
3 network interconnection methods, methods of access to
4 UNE, collocation and many other appendices that are
5 sitting right here. So in this particular question, I
6 guess, does Ameritech Illinois offer interconnection
7 as opposed to collocation at locations off the ILEC's
8 premise, the issue of the question I believe to be do
9 we have interconnection off of Ameritech's premise,
10 and the answer is yes.

11 Q. That really doesn't answer my question.
12 But I was just asking you -- I was just asking you
13 basically to define your statement that you have made
14 in lines 21 through 23?

15 A. The sentence that starts "Such an option
16 is available under terms and conditions for
17 interconnection"?

18 Q. Rather than terms and conditions for
19 collocation.

20 A. If someone wants to interconnect with our
21 network off of our premise, the terms and conditions
22 for interconnection are available on the Network

1 Interconnection Methods Appendix. Rather, if you
2 would want to collocate, which is onsite, then you
3 would have a Collocation Appendix which would have
4 terms and conditions relative to collocation. And
5 they are priced separately, and there is pricing
6 schedules for both.

7 Q. And, again, those are the basic
8 differences between the two?

9 A. Definitely. Collocation is on
10 Ameritech's premise, where interconnection is off of
11 Ameritech's premise.

12 Q. I just wanted to get your understanding
13 of if this is what you understand TDS' proposal to be
14 for this issue. And do you understand them, or TDS,
15 to mean that they would use the adjacent collocation
16 method only in situations where a physical collocation
17 request has been denied, and no adjacent structure on
18 Ameritech's premises is available or do you understand
19 it to mean that TDS to use the adjacent collocation
20 method when there is still space at either the central
21 office or on Ameritech's premises? Which one did you
22 understand their position to be in their proposal?

1 A. Neither. According to the language
2 that's proposed, they are not proposing adjacent
3 collocation. They are asking for adjacent location as
4 well. We offer today adjacent structure collocation,
5 and the two are different. The adjacent location
6 language is off -- that they are proposing, is off of
7 Ameritech's premise, where collocation occurs onsite
8 on the CLEC's -- or excuse me, on the Ameritech
9 Illinois' premise.

10 Q. Okay. But I just wanted you to
11 understand the proposal, when they expect you to use
12 that. In situations where only, you know, where a
13 physical collocation request has been denied and there
14 is no room on the Ameritech premise, in that situation
15 that's one situation, or in the situation where there
16 still is room at the central office and there still is
17 room on Ameritech's premise?

18 A. So you are saying that --

19 Q. Which situation did you understand them
20 to use the adjacent collocation method for?

21 MR. SULLIVAN: I think there is a source of
22 confusion. You keep on saying adjacent collocation

1 and the terminology I think Ms. Bates is talking about
2 is adjacent location. I just want to make sure --

3 MS. STEPHENSON: Okay.

4 MR. SULLIVAN: That's why I think she
5 answered the last question the way she did.

6 WITNESS BATES: Could you repeat your
7 question?

8 Q. In which instance did you understand TDS'
9 proposal to use the adjacent location? In the
10 instance where there is no room left in Ameritech's
11 premise and where a physical collocation request has
12 been denied, in that instance, or in the instance
13 where there is still room at the Ameritech premise and
14 there is still room at the central office?

15 A. From Mr. Lawson's testimony yesterday,
16 although not reflected in the language of the
17 agreement, I understood from his testimony that he
18 wanted to use it when the adjacent structure was not
19 available. However, that wasn't reflected in the
20 language that we agreed and/or have disagreed to at
21 this point nor in his testimony until the latter data
22 request.

1 Q. So, basically, your understanding of TDS'
2 position, would you say it's changed now after hearing
3 Mr. Lawson's testimony yesterday?

4 A. I think so. Initially, from the disputed
5 language it appeared -- well, it is probably better to
6 say that my understanding of what TDS is asking for is
7 that they would like adjacent location to be a form of
8 interconnection or, excuse me, a form of collocation.
9 And since collocation -- part of the FCC, the DC
10 circuit, the Illinois Staff and Commission is onsite,
11 it would be Ameritech Illinois' position that adjacent
12 location cannot occur off-site. So, therefore, it
13 wouldn't be a form of collocation.

14 Q. Okay. Moving on to Issue 101, and I
15 believe Mr. Healy touched upon this, but I just wanted
16 to kind of clarify a few things. With a major
17 construction project what is the customary normal time
18 frame that Ameritech knows about this in advance? And
19 I know there is no specifics, but if you had to pick a
20 norm, how much in advance do they usually know about
21 major construction projects?

22 A. I think it depends on the project. I

1 think a major construction project that has been
2 planned, certainly ten days notice, 20 days notice
3 where feasible, would be reasonable. This would be
4 certainly not the case if it was an unplanned major
5 construction project. And that wouldn't be an
6 emergency, but it would definitely be a major
7 construction project that was urgent and needed to be
8 taken care of.

9 Q. When Ameritech is planning for a major
10 construction project, don't they have to order
11 equipment, material, various types of things to plan
12 for this?

13 A. Certainly, when we plan a project. But
14 major construction doesn't always occur when it is
15 planned for.

16 Q. Okay. I realize there are shorter time
17 durations and there are situations like that.
18 However, the norm -- usually there is quite a bit of
19 planning before the actual project occurs in order to
20 get all the equipment there, in order to get all the
21 materials there. It is not something that people just
22 do overnight. We all know how long it takes to get

1 equipment and materials. It does take quite a bit of
2 time.

3 A. In a normal planned project, I would
4 agree.

5 Q. And why do you feel that the 20 -day
6 business notification to the CLECs is unreasonable?

7 A. If Ameritech Illinois was to give 20 days
8 notice for every major construction project, we feel
9 it would jeopardize the ability -- since that's 20
10 business days, an entire almost four weeks to a month,
11 you have other things that go on in a central office
12 besides just TDS' work, which jeopardizes not only
13 other competitors' work in having to provide TDS 20
14 days notice before anything could begin for someone
15 else that may be related to their activity. And
16 TDS-101 actually says not work that's directly
17 affecting TDS' physical collocation; it's actually
18 just work that's around or in the area of. So it's
19 not something that if you measure out reasonable
20 versus risk, the risk is very low in a major
21 construction project that is in the general area, that
22 would actually affect TDS, as opposed to, say, 102.

1 TDS-102, where you are talking about power, there is
2 more risk, and hence the reason why we accommodate an
3 additional five-day interval.

4 Q. Wouldn't you agree, though, just overall,
5 any time you start a major construction project, there
6 is some sort of risk of disruption with any type of
7 major construction?

8 A. I would say the risk is lower when you
9 are in the general area of as opposed to working right
10 where their collocation would be.

11 Q. But there is still a moderate risk,
12 though?

13 A. Yeah, there is a little.

14 Q. And what is the notification interval
15 currently being used by Ameritech for a CLEC on
16 location?

17 A. Contractually in each interconnection
18 agreement, each CLEC agrees to language. In this
19 particular agreement I can, as we know, five days is
20 the interval for major construction and for power we
21 are proposing ten days. But is that your question?

22 Q. I just kind of wanted to know what the

1 overall one is that's currently being used. I
2 understand what it is for this proposal.

3 A. This is what we are using for Ameritech
4 Illinois.

5 Q. Okay. And what is the current
6 notification interval for notifying an Ameritech
7 central office that work is going to start?

8 A. Could you repeat the question?

9 Q. The notification interval that is
10 currently being used for notifying an Ameritech
11 central office that work is going to begin?

12 A. Who would be notified in Ameritech?

13 Q. Pardon me?

14 A. I guess I don't understand the question.
15 I am sorry.

16 Q. When does Ameritech usually notify its
17 central office that work is going to be done?

18 A. Oh, that work is going to be done?

19 Q. Uh-huh.

20 A. That can be anywhere between a day and
21 over a day.

22 Q. And how is the CLEC notified that the

1 work, actually the CLECs, that work is going to start.

2 How is notification given?

3 A. I believe in the contract it states that
4 the notification is provided in writing. Yes.

5 Q. And I am sorry, what type of information
6 is in the notification? Do you have the time that
7 it's going to begin? Do you know exactly what's
8 provided?

9 A. I am sure that the date that the
10 construction is going to begin, the effective period,
11 would be in there. I haven't actually seen it.

12 Q. You know, one thing that we were all kind
13 of hung up on was the feasible language, "where
14 feasible." In our mind "where feasible" means we have
15 that much notification in advance where there is not
16 an emergency. On your rebuttal testimony on page 9
17 you talk about the handbook, and the language that TDS
18 was requesting obligates Ameritech to an excessive
19 interval that is imposed as a concrete interval,
20 rather than an interval that Ameritech Illinois will
21 strive to meet where reasonable and feasible.

22 I know there is no -- even in the

1 handbook it said 20 days, you know, where feasible.
2 However, don't you feel that there should be some sort
3 of concrete interval? And as I said, I know there is
4 exceptions for emergencies and that type of situation,
5 but don't you think it is important to have a concrete
6 interval?

7 A. I think Ameritech Illinois will give the
8 CLECs as much notice as we can. And it's been my
9 experience that that's the case. I don't know that we
10 always receive five days notice. I don't know that we
11 always receive ten days notice. However, we are
12 required by contract and certainly by the handbook to
13 provide as much notice as we can. And that's our
14 intent, and in good faith we will continue to do that.

15 Q. And in Issue 102, I believe it's in your
16 rebuttal testimony, it begins line 21, it is talking
17 about the power disruption. And the language says if
18 SBC does not have an alternate plan, SBC will make
19 reasonable accommodations to provide CLECs with
20 alternate power. How will Ameritech provide alternate
21 power?

22 A. We have redundant power in the offices.

1 We can also take extra steps to bring in power sources
2 if the power work is, I guess, serious enough, back up
3 power sources.

4 MS. STEPHENSON: Thank you. I believe my
5 co-counsel has a couple questions.

6 CROSS EXAMINATION

7 BY MS. KELLY:

8 Q. Ms. Bates, briefly with respect to Issue
9 66, adjacent collocation, it's page 3 of your reply,
10 can you please explain the reasonable control over the
11 design, construction, and placement that Ameritech
12 seeks regarding adjacent collocation?

13 A. I would contend that we are not seeking
14 to put unreasonable parameters on a CLEC in regards to
15 an adjacent structure. We haven't had anybody request
16 an adjacent structure in Ameritech Illinois. So at
17 this point, one of the reasons that we would like to
18 work with TDS and work with the Commission is to, as
19 we actually have an application, learn what would be
20 reasonable.

21 But with absence of an actual example, I
22 would say that, because Ameritech's property is being

1 taken, we have a legitimate interest in what is being
2 built on our property. So, certainly, zoning is the
3 lowest level of, I guess, constraint. But outside of
4 zoning, with design, the shape of a structure, the
5 location of a structure, as Mr. Lawson agreed
6 yesterday, the ILEC is probably in the best position
7 to project manage which CLECs are going into which
8 particular areas, and coordinate that among all of the
9 CLECs.

10 So as part of the control or construction
11 process, I can also assume that if you have two CLECs
12 that are building in a busy central office, you are
13 going to have coordination of schedules, coordination
14 of deliveries, making sure you have access to the
15 building. Certainly, probably the project management
16 is quite high, a quite high responsibility, on
17 Ameritech.

18 MS. KELLY: Thank you.

19 EXAMINER WALLACE: Redirect?

20 MR. SULLIVAN: Sure.

21

22

1 REDIRECT EXAMINATION

2 BY MR. SULLIVAN:

3 Q. Just a couple things, Ms. Bates. Let's
4 talk about Issue 101 and 102 which you were asked a
5 number of questions on. What sort of projects
6 constitute major construction projects, just by way of
7 example?

8 A. I would say that construction of
9 fixtures, walls, certainly air conditioning, major
10 pieces of equipment would constitute major
11 construction.

12 Q. Would preparation of collocation space
13 for another CLEC possibly constitute a major
14 construction project?

15 A. Definitely.

16 Q. And is that construction subject to
17 intervals in the construction intervals for Ameritech
18 Illinois?

19 A. Yes, it is.

20 Q. And is it Ameritech Illinois' or its
21 subcontractor's responsibility to undertake those
22 construction projects?

1 A. Yes.

2 Q. And what is the interval -- what sort of
3 intervals does Ameritech have for completing those
4 type of major construction projects to prepare
5 collocation arrangements for CLECs?

6 A. The intervals can be, depending on what
7 type of space is being prepared, anywhere from up to a
8 180 days was the language we were working with in the
9 contract.

10 Q. And what's the lower end of that interval
11 for interconnection agreements generally in Illinois?
12 Not specifically this one, but do they go as low as 90
13 days?

14 A. Yes.

15 Q. And that's 90 calendar days?

16 A. Yeah, 90 calendar days.

17 Q. So under TDS' proposal that you give them
18 20 business days to notify them of a major
19 construction project, would that have an impact on
20 your ability to meet a 90-day construction interval
21 for a CLEC's collocation arrangement?

22 A. It would, because it would in effect take

1 about a third of the construction time and halt it
2 until the notice was provided.

3 Q. Ms. Stephenson asked you some questions
4 about the risks associated with major construction
5 projects, and I think there was some confusion as to
6 whether you viewed the measure of risk as moderate or
7 low for construction in the vicinity of a CLEC's
8 collocation area. Would you clarify?

9 A. I think in an area or general area the
10 risk would be low. Anything directly with TDS' cage
11 would be much higher.

12 Q. You were also asked about the types of
13 alternate power arrangements that Ameritech provides
14 in the event that there is going to be AC or DC power
15 work. Do you recall that line of questioning?

16 A. I am sorry, could you repeat that?

17 Q. You were also asked questions about what
18 sort of alternate power supply that Ameritech
19 provides?

20 A. Yes.

21 Q. Does Ameritech also provide stand-alone
22 generators in some instances?

1 A. Yes.

2 Q. And if Ameritech doesn't have an
3 alternate plan to provide power to TDS, is Ameritech
4 willing for its contract language to allow TDS to come
5 up with its own alternate plan?

6 A. Oh, definitely, we would consult with TDS
7 and work with them.

8 Q. Mr. Healy asked you about Issue 93 which
9 has to do with amending collocation applications, and
10 he asked you some questions about what the meaning of
11 "if applicable" was. Could you explain the
12 circumstances under which Ameritech would impose an
13 application fee for amending a collocation
14 application?

15 A. In amending an application the same steps
16 that occur with a general application would have to
17 then, depending on what point it was amended, would
18 have to be completed again. So in some cases in some
19 of those steps, double work would be done. But a
20 minor change, P.O. box change, something minor to that
21 degree, is not something that we are proposing. And,
22 hence, the language "if applicable."

1 Q. Is Ameritech able to develop a list of
2 all the situations under which an application fee will
3 be applicable in those situations?

4 A. A rather exhaustive process we don't -- I
5 don't know that you could actually pull in all of the
6 different permutations that could occur with an
7 application changing. But certainly anything minor, I
8 think, is the intent of the language.

9 Q. Lastly, you talked about Issue 33. You
10 were asked some questions about the terms and
11 conditions for collocation. And did I understand you
12 correctly that collocation is a method of
13 interconnection and a method of access to UNES?

14 A. Yes.

15 Q. Does Ameritech offer other methods of
16 interconnection that are available to TDS?

17 A. Yes.

18 Q. And those methods of interconnection are
19 in the Appendix NIM?

20 A. Yes.

21 Q. If I could ask you to take a look at
22 that for a moment. If you see Appendix UNE up there,

1 you might as well pull that out, too. If I could ask
2 you to turn to Section 3 of Appendix NIM, this section
3 lists the several methods of interconnection available
4 to TDS, is that correct?

5 A. Right.

6 Q. And the first two are physical and
7 virtual collocation?

8 A. Yes.

9 Q. The next two, Section 3.3 and 3.4, are
10 leased facility interconnection and fiber meet
11 interconnection?

12 A. Yes.

13 Q. I know you were asked some questions
14 about the terms and conditions. Is this where one
15 would find the terms and conditions for the
16 non-collocation methods of interconnection?

17 A. Yes.

18 Q. And, similarly, if you could turn to the
19 Appendix UNE in Section 3, does Section 3 identify the
20 terms and conditions for methods of access to UNES
21 that are available to TDS?

22 A. Yes, it does.

1 Q. Now, is it your understanding that TDS is
2 proposing that the adjacent location method be
3 available as a type of collocation?

4 A. Yes.

5 Q. And what's your understanding of their
6 position based on?

7 A. The contract language that they have
8 proposed.

9 Q. Is it based on anything else?

10 A. The testimony, both written and
11 Mr. Lawson's testimony yesterday.

12 MR. SULLIVAN: I have nothing further.

13 EXAMINER WALLACE: Recross, Mr. Healy?

14 RE CROSS EXAMINATION

15 BY MR. HEALY:

16 Q. A couple of points. On the last point
17 that Mr. Sullivan raised, if we changed the name to
18 interconnection, is there any other objection?

19 A. The name, in other words, adjacent
20 location interconnection, but still leave the language
21 in the Collocation Appendix?

22 Q. Yes.

1 A. Since adjacent location isn't on the
2 premises of Ameritech, it would not be collocation.

3 Q. I understand. So if we don't call it
4 collocation any more, is there any other objection?

5 MR. SULLIVAN: I am going to object to any
6 attempt to negotiate on the stand, since this is
7 Mr. Healy's objection.

8 MR. HEALY: I am not proposing a change. I
9 am trying to understand, is her only objection the
10 name.

11 WITNESS BATES: No, my objection is to the
12 issue that collocation is by definition from the FCC,
13 DC circuit court, as well as the Staff and the
14 Illinois Commission, on the premises or on the site of
15 Ameritech Illinois. So, therefore, anything off-site
16 wouldn't be considered collocation.

17 Q. Okay. I think that answers my question.
18 The Staff counsel asked you about the notice
19 provisions under 101 and 102, and she asked a question
20 that I don't think I understood the answer to. And
21 that is, how does Ameritech internally provide
22 notification to the people working in the central

1 office that a construction project is about to begin?

2 A. I don't know the specifics of that, but I
3 certainly could get that information.

4 Q. Does Ameritech -- let me ask this
5 question. Are the people that do the construction
6 projects in the central office the same people that
7 staff it on a day-to-day basis?

8 A. I don't know that to be the case.

9 Q. Is it your understanding that it is a
10 different group within Ameritech that actually does
11 these construction projects?

12 A. I think it can be various, depending on
13 what the specific construction is that's being done.

14 Q. If it was a major construction project
15 that you described as perhaps building walls or
16 installing air conditioning systems or duct work,
17 would that be performed by the people that normally
18 staff the central office?

19 A. Again, I would probably have to consult
20 with some people in the central office to find out who
21 would actually do that work.

22 Q. So you don't know the internal workings

1 of the Ameritech construction process to that degree,
2 is that correct?

3 A. To that degree, yes.

4 Q. And Mr. Sullivan asked you some follow-up
5 questions concerning intervals for collocation
6 arrangements. Do you recall that?

7 A. Uh-huh.

8 Q. And I apologize if maybe you weren't
9 keeping pace with the events yesterday. But yesterday
10 we resolved the disputed issues on that?

11 A. Yes, I understand.

12 Q. To, essentially, adopt the time frames in
13 Ameritech's tariff, is that correct?

14 A. That's correct.

15 Q. And in Ameritech's tariff the time for a
16 CLEC to respond to Ameritech's notification that
17 collocation space is available is 20 days, is it not?

18 A. That's correct.

19 Q. And the time frame that Ameritech allots
20 itself under the tariff for certain projects that
21 involve modifications is actually 126 days, not 90,
22 isn't it?

1 MR. SULLIVAN: I am going to object that it
2 mischaracterized her testimony. She didn't testify
3 about what the collocation tariff said.

4 MR. HEALY: She testified about what the
5 intervals Ameritech must meet are. She said it was 90
6 days.

7 MR. SULLIVAN: The record would reflect she
8 said it was pursuant to agreements that we had with
9 other CLECs.

10 Q. Would you agree that under this agreement
11 Ameritech has 126 days with a possible extension of
12 another 28 under the tariff terms?

13 A. I believe so. I don't have the tariff in
14 front of me and, again, I wasn't involved in those
15 conversations. But it would be what was in the
16 tariff, because I understand that was in the
17 agreement.

18 MR. HEALY: Thank you.

19 EXAMINER WALLACE: Ms. Stephenson?

20 MS. STEPHENSON: I have nothing further.

21 EXAMINER WALLACE: All right. Thank you,
22 Ms. Bates. You may step down.

1 (Witness excused.)

2 (Whereupon the hearing was in a
3 short recess.)

4 EXAMINER WALLACE: Back on record.

5 MR. SULLIVAN: Before we proceed with Staff's
6 witness, I would just want to move for admission of
7 Ameritech Exhibits 12 and 13.

8 MR. HEALY: Those are the testimonies?

9 MR. SULLIVAN: Yes, the direct testimony and
10 reply testimony of Ms. Bates.

11 EXAMINER WALLACE: Any objection?

12 MR. HEALY: No.

13 MS. STEPHENSON: No objection.

14 EXAMINER WALLACE: Those two exhibits are
15 admitted.

16 (Whereupon Ameritech Illinois
17 Exhibits 12 and 13 were
18 admitted into evidence.)

19 Staff ready to go? All right,
20 Mr. Clausen, please take the stand.

21

22

1 TORSTEN CLAUSEN

2 called as a Witness on behalf of the Staff of the
3 Illinois Commerce Commission, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. STEPHENSON:

7 Q. Good morning, Mr. Clausen?

8 A. Good morning.

9 Q. Could you please state your name and give
10 your business address.

11 A. Yes, my name is Torsten Clausen,
12 C-L-A-U-S-E-N. My business address is 527 East
13 Capitol Avenue, Springfield, Illinois 62701.

14 Q. And, Mr. Clausen, did you prepare a
15 verified statement in this matter?

16 A. Yes, I did.

17 Q. And that's Staff Exhibit Number 1?

18 A. Correct.

19 MS. STEPHENSON: I now tender the witness for
20 cross.

21 MR. HEALY: I really don't have any
22 questions.

1 MR. FRIEDMAN: I guess that takes care of who
2 goes first.

3 (Laughter)

4 I do have a few.

5 EXAMINER WALLACE: All right.

6 CROSS EXAMINATION

7 BY MR. FRIEDMAN:

8 Q. Good morning.

9 A. Good morning.

10 Q. If you would turn to page 9 of your
11 testimony, there is a sentence that starts on the
12 bottom of -- actually, it starts on the bottom of page
13 8 and carries over onto page 9, that refers to
14 Ameritech's FMOD policy and you say that it was
15 announced by Ameritech in Accessible Letter CLECAM
16 00-153, right?

17 A. Right.

18 Q. Now, in light of the document --

19 MR. HEALY: Pardon me. Can we get the page
20 reference again?

21 MS. STEPHENSON: I believe it's 9 and 10
22 instead of 8 to 9.

1 MR. FRIEDMAN: On mine it's 8 to 9. Shall we
2 go off the record for just a second?

3 EXAMINER WALLACE: Yes.

4 (Whereupon there was then had
5 an off-the-record
6 discussion.)

7 EXAMINER WALLACE: Back on the record. Let's
8 try it again.

9 Q. At some point in your testimony,
10 Mr. Clausen, you say, do you not, that there is an
11 Accessible Letter CLECAM 00-153 by which Ameritech
12 Illinois makes available the so-called FMOD policy in
13 Illinois?

14 A. Correct.

15 Q. In light of the document which is
16 attached to the testimony of our witness Michael
17 Silver as Schedule MDS-1 and in light of discussion
18 that you heard yesterday, do you now understand that
19 the current accessible letter by which Ameritech
20 Illinois makes available the FMOD policy or process, I
21 should say, in Illinois is letter CLECAM 01-140?

22 A. Yes, I believe that's correct. And the

1 sentence you are referencing in my testimony has a
2 footnote attached to it, and I am citing from
3 Ameritech Illinois' response of TDS' petition for
4 arbitration. So clearly that was an earlier date and
5 that's where this cite is coming from.

6 Q. Understood, sure. I apologize, this is
7 going to be a little halting because I am having to
8 change all my page references.

9 Somewhere in your testimony you say that
10 Ameritech Illinois, as opposed to Ameritech Wisconsin,
11 fails to incorporate language in Section 2.9.1.1 of
12 the UNE Appendix that references changes in amendments
13 to the FMOD policy, do you not?

14 A. Yes.

15 Q. Can you direct me to the page number and
16 line number where you say that? Would it be the last
17 couple lines on page 10?

18 A. Correct.

19 Q. I need you to explain what you mean when
20 you say that Ameritech Illinois, as opposed to
21 Ameritech Wisconsin, fails to incorporate language in
22 2.9.1.1 that references the changes in amendments.

1 And we can think of it as two questions, I suppose.

2 One is how did Ameritech Wisconsin do that, if at all?

3 A. Okay.

4 Q. And the other would be, how is it that
5 you see Ameritech Illinois in contrast to Ameritech
6 Wisconsin not doing that?

7 A. Here is what -- here is the reason for
8 including that in my testimony. My copy of Appendix
9 UNE, Section 2.9.1.1...

10 Q. Right.

11 A. ..As I received it in the Ameritech
12 Illinois' response to TDS' petition for arbitration,
13 contains one sentence, and it ends with an Accessible
14 Letter CLECAM 00-153. Is that the same copy?

15 Q. It is.

16 A. Okay. And I compared that language to
17 the decision that the Wisconsin arbitration panel
18 issued on this particular issue. And if you go to
19 page -- starting on page 34, going onto page 35 of the
20 Ameritech Wisconsin arbitration, that sentence seems
21 to be different from what I am reading in Appendix UNE
22 as attached to Ameritech Illinois' response to TDS'

1 petition for arbitration. Hence, the discrepancy.

2 Q. I understand now. Thank you. Are you
3 recommending that Ameritech Illinois' proposed 2.9.1.1
4 be included in the parties' agreement or not?

5 A. Yes, I do.

6 Q. So you say it should be included but in
7 your view it should go on -- some language should be
8 added to make clear that what we are talking about is
9 the right accessible letter, right, and the numbers
10 would now change?

11 A. Exactly.

12 Q. As it may be amended or changed from time
13 to time?

14 A. Actually, I had some proposal in mind
15 that might not even need to change the current
16 accessible letter that's in the current language. It
17 could just have an addition to that sentence stating
18 including all subsequent changes to this modification
19 process. I think that would take care of it.

20 Q. At page 11 of your testimony there is a
21 question and then a rather long answer. And toward
22 the beginning of the answer, at the beginning you say,

1 "I find Ameritech's definition of the scope of the BFR
2 process precarious. It seems to indicate that in the
3 event the FCC or this Commission finds a new UNE, all
4 orders for the new UNE must go through the BFR
5 process."

6 I want to direct your attention to
7 Section 2.2.9 of the UNE Appendix. If you will just
8 tell me when you are there?

9 A. Uh-huh.

10 Q. 2.2.9.

11 EXAMINER WALLACE: Say that again?

12 Q. 2.2.9. Are you there?

13 A. I am.

14 Q. All right. Now, in the last sentence of
15 2.2.9 we have a sentence in italics, right?

16 A. Uh-huh.

17 Q. And the italics means that we are
18 proposing it and TDS is opposing it. And the language
19 says, "In the event that the FCC or the Commission
20 changes the list of required unbundled network
21 elements, the parties shall comply with Section 4.0 of
22 the General Terms and Conditions to make the necessary

1 revisions to this appendix." Did you take that
2 sentence into account when you formed the opinion that
3 you express in your testimony that I just read?

4 A. I believe I did, but I am not a hundred
5 percent sure at this time.

6 Q. Well, at least as I understand it, this
7 sentence that we are proposing for 2.2.9 says that if
8 the FCC or the Illinois Commerce Commission changes
9 the list of UNEs, in other words, for example, defines
10 a new UNE, then we have to do what it says in General
11 Terms and Conditions 4.0, and I will tell you what
12 that amounts to is changing the contract by adding
13 that new UNE. Is that how you understand it as well?

14 A. Yes.

15 Q. Now, given that understanding, do you
16 still think that Ameritech Illinois is proposing that
17 if the FCC or the Illinois Commerce Commission
18 identifies a new UNE, that TDS has to do a BFR for
19 that UNE over and over again every time it wants it?

20 A. I think the cause for my confusion or
21 concern might be related to Section 5.2.1 of the
22 Appendix UNE where Ameritech defines a BFR process.

1 Q. Right.

2 A. And Ameritech's proposed language states
3 a BFR is a contract requesting a process by which a
4 CLEC may request SBC-Ameritech to provide CLECs access
5 to a new, undefined UNE that is required to be
6 provided by SBC-Ameritech under the Act but is not
7 available under this agreement, what you find in the
8 generic appendix at the time of CLEC's request. And I
9 think I was just -- I found this interesting in the
10 way that this language seems to indicate that there
11 could be UNEs that Ameritech is required to provide
12 under the Act, but they have not been defined yet.
13 That is just something I am struggling with.

14 Q. Let me take a stab at telling you how I
15 think this works under this language, and I am going
16 to ask you if you disagree. Okay? At some moment in
17 time TDS wants access to something that it thinks
18 should be an unbundled network element but neither the
19 FCC nor this Commission has defined it as such, and so
20 TDS submits a BFR. Together so far?

21 A. We are.

22 Q. And Ameritech may or may not -- Ameritech

1 must respond to the BFR, correct?

2 A. At least respond, yes.

3 Q. They must at least respond. And
4 Ameritech may or may not agree to provide the network
5 element as an unbundled network element?

6 A. That's my understanding, yes.

7 Q. And if the parties find themselves in
8 disagreement or under other circumstances, this
9 Commission or the FCC might at some point say that
10 network element must be unbundled, right?

11 A. Right.

12 Q. And then that makes that a network
13 element that has been defined as one that must be
14 offered as an unbundled network element, correct?

15 A. Correct.

16 Q. Now, under 2.2.9, when that happens, that
17 is, when the Illinois Commerce Commission or the FCC
18 identifies a new network element as having to be
19 unbundled, the parties then amend their contract so
20 that that network element gets added to the list that
21 has to be provided under the agreement, is that your
22 understanding of 2.2.9?

1 A. That's my understanding.

2 Q. Now, I thought that your concern about
3 5.2.1 was, well gee, TDS is going to have to keep
4 doing the BFR over and over and over again for this
5 new network element, right?

6 A. That was my initial understanding,
7 correct.

8 Q. And I am suggesting that in fact TDS will
9 not have to do so because, once it's determined that
10 it must be unbundled, it is defined as a network
11 element, the contract gets changed, they no longer
12 have to do a BFR. Do you accept that as a correct
13 reading of this contract?

14 A. I certainly do, but I want to add to
15 that. I want to point back to the section I was
16 referencing. I was just reading that language in
17 Section 5.2.1 of Appendix UNE. I just had a hard time
18 understanding how something -- how something can be
19 required under the Act but is not yet a defined UNE.
20 And when you put in the language "required by the Act
21 but not yet defined as a UNE," whom are you referring
22 to that interprets this to be required under the Act.

1 Q. Okay. I understand what you are
2 struggling with. I do want to ask you one more
3 question, though. Do you understand that this first
4 sentence of 5.2.1 that you were struggling with, that
5 is agreed language between the parties; that is not
6 language that we are proposing and they are opposing?

7 A. Yes.

8 Q. You understand that?

9 A. Uh-huh.

10 Q. And you are not suggesting, are you, that
11 the Commission in this arbitration reject or tweak
12 agreed language, are you?

13 A. No, but I suggest the Commission needs to
14 look at the Interconnection Agreement in total and
15 needs to look at how various provisions of the
16 Interconnection Agreement fit together. So that I
17 certainly believe should be the case.

18 Q. Do you have an understanding or not as to
19 whether the Illinois Commerce Commission has ever
20 ordered Ameritech Illinois to comply with or to
21 implement the FMOD process?

22 A. Well, I am aware of an Illinois

1 proceeding, Docket Number 99-0593, where Ameritech
2 Illinois was ordered to clarify or amend what has been
3 called an Illinois Special Construction which we are
4 referring to as FMOD policy. So to that extent, yes,
5 I am aware of an order where the Illinois Commerce
6 Commission did take part in defining the FMOD policy
7 or the Special Construction Policy.

8 Q. Let's go at it a slightly different way.
9 We saw earlier when you and I were talking that there
10 is this accessible letter that's attached to the
11 testimony of our witness Michael Silver, Schedule
12 MDS-1, and I think we understand that that is the
13 setting forth of the FMOD policy for Illinois, right?

14 A. Among other states and Illinois, correct.

15 Q. Okay. Now, let me just put it this way.
16 Do you have an understanding as to whether or not the
17 Illinois Commerce Commission has ever ordered
18 Ameritech to do what it says in that document? And
19 let me clarify, because I can see you are struggling.
20 I am not asking are there some things in that document
21 that the Commission has ordered Ameritech to do. I am
22 asking, do you have an understanding as to whether the

1 Commission has ever said in effect, "Ameritech
2 Illinois, we order you to do that which it says in
3 this or some predecessor accessible letter
4 promulgating the FMOD policy"?

5 A. If you are asking me if the Illinois
6 Commission ordered Ameritech the FMOD policy word by
7 word in the most recent accessible letter, no,
8 certainly not. Did this Commission order Ameritech to
9 amend or clarify its language as it relates to the
10 FMOD policy or Special Construction, as we call it in
11 Illinois, yes, certainly this Commission did
12 investigate that policy.

13 Q. And that was the docket you referred to?

14 A. Correct.

15 Q. Did you hear yesterday -- I am switching
16 subjects now -- did you hear yesterday that the
17 parties had arrived at agreement on Issue TDS-219?

18 A. Yes.

19 Q. Does the fact that the parties have
20 arrived at agreement on TDS-219 affect your
21 recommendation on TDS-107? And this isn't a test
22 question, so if you don't know -- I should say you

1 should feel free to consult your testimony on TDS-107.

2 A. No, it is still my recommendation as it
3 is in my testimony when it pertains to Issue 107.

4 MR. FRIEDMAN: That's all the questions I
5 have.

6 EXAMINER WALLACE: Redirect?

7 MS. STEPHENSON: No, I have no redirect.

8 MR. HEALY: I do have some follow-up based on
9 a line of questioning of Mr. Friedman.

10 EXAMINER WALLACE: Just a minute. I have
11 actually a preference against crossing on
12 Mr. Friedman's cross, unless he objects. Do you
13 object?

14 MR. FRIEDMAN: Well, I will object.

15 EXAMINER WALLACE: Well, I didn't mean to put
16 words in your mouth, but I am not sure that this is
17 quite allowable or not.

18 MR. HEALY: If I may just explain,
19 Mr. Friedman asked the witness about a section of the
20 contract that was not referenced in the witness'
21 testimony, and that's why I did not previously plan to
22 inquire about that section. But Mr. Friedman having

1 raised that, I would like to clarify it.

2 EXAMINER WALLACE: All right. Go ahead.

3 CROSS EXAMINATION

4 BY MR. HEALY:

5 Q. Mr. Friedman asked you about Section
6 2.2.9...

7 A. Correct.

8 Q. ...And whether you had reviewed that. Is
9 it your understanding that -- let me ask this. It's
10 your understanding that the parties could bring a
11 proceeding and ask the FCC or the Illinois Commerce
12 Commission to issue the order that's referenced in
13 this section's declaring that an element is necessary
14 and meets the necessary and impair standards, is that
15 correct?

16 A. Well, not just TDS, anybody can or the
17 Commission on its own motion can declare or define a
18 new UNE, or the FCC, correct.

19 Q. And presumably that network element in
20 the physical world would exist prior to that order,
21 could it not, or could exist prior to that order?

22 A. Well, if it would not exist, I think any

1 Commission would have a hard time declaring that as a
2 UNE.

3 Q. So at that point in time when the
4 Commission issues its order, that order will be that
5 this particular physical piece of the network meets
6 the necessary and impair standards, is that your
7 understanding?

8 A. Correct, that's my understanding.

9 Q. Would it also be your understanding that
10 prior to the Commission's order in the physical world
11 that piece of equipment would meet the necessary and
12 impair standard?

13 MR. FRIEDMAN: I think I am going to object.
14 The question really calls for a legal conclusion
15 having to do with whether -- the question really is
16 whether retroactive effect should be given to a ruling
17 of this Commission or the FCC under certain
18 circumstances.

19 MR. HEALY: I will withdraw the question and
20 ask a different question.

21 Q. Prior to the date of the hypothetical
22 Commission order declaring that a physical piece of

1 the network meets the necessary and impair standard,
2 that piece of the network would have exactly the same
3 physical characteristics as it did the day after the
4 order, would it not?

5 A. I cannot speak for possible
6 circumstances, but certainly that's a possible
7 scenario.

8 MR. HEALY: Thank you.

9 EXAMINER WALLACE: Thank you, Mr. Clausen.
10 You may step down.

11 (Witness excused.)

12 MS. STEPHENSON: At this time Staff would
13 move to have Mr. Clausen's verified statement, Staff
14 Exhibit Number 1, admitted into evidence.

15 EXAMINER WALLACE: Any objection?

16 MR. HEALY: No.

17 EXAMINER WALLACE: Staff Exhibit Number 1 is
18 admitted.

19 (Whereupon Staff Exhibit 1
20 was marked for purposes of
21 identification as of this
22 date and admitted into

1 evidence.)

2 EXAMINER WALLACE: All right. Next witness.

3 MS. KELLY: At this time Staff calls
4 Mr. Omoniyi.

5 A. OLUSANJO OMONIYI
6 called as a Witness on behalf of the Staff of the
7 Illinois Commerce Commission, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. KELLY:

11 Q. Good morning, Mr. Omoniyi. Would you
12 please state your name and your business address.

13 A. Yes. A. Olusanjo Omoniyi. My business
14 address is 527 East Capitol Avenue, Springfield,
15 Illinois. The zipcode is 62701.

16 Q. Do you have in front of you the verified
17 statement?

18 A. Yes.

19 Q. And did you prepare this document?

20 A. Yes.

21 Q. And it's labeled Staff Exhibit 3.0?

22 A. Correct.

1 MS. KELLY: At this time Staff tenders the
2 witness for cross examination.

3 CROSS EXAMINATION

4 BY MR. SULLIVAN:

5 Q. Good morning, Mr. Omoniyi.

6 A. Good morning.

7 Q. My name is Mike Sullivan. I just have a
8 couple questions for you on TDS Issue 66 and that
9 pertains to adjacent structure collocation.

10 A. Yes.

11 Q. Section 4.1.4 of the agreement.

12 A. Okay.

13 Q. Were you here for the testimony of
14 Mr. Lawson and Ms. Bates today and yesterday?

15 A. Yes.

16 Q. Do you agree that Ameritech Illinois is
17 in the best position to manage the various
18 construction projects that occur on its property?

19 A. Yes.

20 Q. So, for instance, do you agree that it
21 would be reasonable for Ameritech to stagger the
22 scheduling if there were more than one CLEC who wanted

1 to build adjacent structures on the same premise?

2 A. Possibly, yes.

3 Q. Would you agree with me that it would be
4 reasonable for Ameritech to regulate the way that
5 subcontractors of the CLECs perform their construction
6 projects on Ameritech's premises?

7 A. Can you run that by me one more time? To
8 regulate --

9 Q. Sure. Let me try to be more specific.
10 Would it be reasonable for Ameritech to impose a
11 regulation that said if you are constructing an
12 adjacent structure on our property, you can't block
13 our employees' access to the building?

14 A. Yes.

15 Q. Would it be reasonable to instruct them
16 to use a back entrance rather than a front entrance to
17 access the property?

18 A. Mr. Sullivan, I am not sure where we are
19 headed with that question. But I will say that is
20 related to anything regarding safety and maintenance
21 requirements on the premises.

22 Q. Are you familiar with paragraph 44 of the

1 FCC's Advance Service Order?

2 A. Yes.

3 Q. And would you agree with me that that
4 provides that this State Commission has the power to
5 address the issue of the legitimate reasons a CLEC
6 might have to exercise control over designing
7 construction parameters?

8 A. Yes.

9 Q. In fact, the FCC specifically left this
10 Commission the job of resolving those issues, is that
11 right?

12 A. Yes, it did.

13 Q. And you agree that the ILEC has the right
14 to determine the location of adjacent structures on
15 its property?

16 A. If that decision has anything to do with
17 safety or maintenance requirements, I would say yes.
18 But if it goes beyond that, perhaps I would have to
19 object to such a suggestion.

20 Q. Would you agree that so long as the --
21 let me strike that. You were here for Ms. Bates'
22 testimony where she said that there were no -- there

1 had not yet been any requests for adjacent structure
2 collocation by any CLECs in Illinois?

3 A. Yes, I heard them and I was surprised.

4 Q. In light of that fact, do you believe
5 it's reasonable that Ameritech has not yet adopted a
6 set of guidelines for regulating the construction,
7 design and placement of adjacent structures?

8 A. I don't know what Ameritech has in place,
9 without an experience on adjacent collocation
10 structure. And I can't speak for Ameritech because I
11 don't know what is in place yet.

12 Q. If in fact they have not yet developed
13 specific guidelines in light of the fact that they
14 have had no requests for adjacent structure yet in the
15 state, would you find it reasonable that they haven't
16 yet done so?

17 A. Can you -- I am having a little trouble
18 with your question. Can you restate that?

19 MR. SULLIVAN: You know, let me just withdraw
20 it. That's all the questions I have.

21 EXAMINER WALLACE: Mr. Healy?

22

1 CROSS EXAMINATION

2 BY MR. HEALY:

3 Q. Yes. In turning back as we were to Issue
4 TDS-66, in this contract that we are talking about
5 there are no specifications of the reasonable
6 restrictions that Mr. Sullivan was asking about, are
7 there?

8 A. There is not.

9 Q. And so there is really no way for a CLEC
10 to know what Ameritech considers a reasonable
11 restriction until Ameritech tries to impose it, is
12 that correct?

13 A. That's correct.

14 Q. And do you consider that a reasonable
15 position for Ameritech to take?

16 A. No, not really. In fact, in my verified
17 statement I am a little bit concerned that Ameritech
18 wants to try something that it has never even proposed
19 and nobody knows the limits. I just think from my own
20 opinion that would be a slippery slope to go, because
21 we don't know the beginning and where they can end up
22 when we consider the risk of the conditions.

1 EXAMINER WALLACE: Any objection? Staff
2 Exhibit 3.0 is admitted.

3 (Whereupon Staff Exhibit 3.0 was
4 marked for purposes of
5 identification as of this
6 date and admitted into
7 evidence.)

8 Next witness.

9 MS. STEPHENSON: Russell Murray.

10 RUSSELL MURRAY
11 called as a Witness on behalf of the Staff of the
12 Illinois Commerce Commission, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. STEPHENSON:

16 Q. Could you please state your name and give
17 your business address.

18 A. Russell Murray, 527 East Capitol Avenue,
19 Springfield, Illinois 62701.

20 Q. And, Mr. Murray, did you prepare a
21 verified statement in this case?

22 A. Yes, I did.

1 Q. And is that Staff Exhibit 2.0?

2 A. Yes, it is.

3 MS. STEPHENSON: I now tender the witness for
4 cross.

5 EXAMINER WALLACE: Mr. Healy?

6 CROSS EXAMINATION

7 BY MR. HEALY:

8 Q. Just a few questions concerning Issues
9 TDS-101 and 102. And it is your testimony that the
10 20-day interval requested by TDS is a reasonable
11 interval for notification of these types of projects,
12 is that correct?

13 A. Yes.

14 Q. And would it be reasonable for the CLEC
15 to require that notice, for instance, so that it could
16 plan the timing of installation of new equipment not
17 to occur during a construction project?

18 A. That is correct.

19 Q. Would it also be reasonable, for
20 instance, for a CLEC to try and plan changing out
21 pieces of equipment that need to be replaced to avoid
22 those types of projects?

1 A. Yes.

2 Q. And would a CLEC also be reasonable in
3 expecting to have the notice so that it can schedule
4 its routine maintenance inside its cage?

5 A. Yes.

6 Q. And another reason the CLEC may
7 reasonably want additional notice would be to put in
8 the timing of software upgrades to its equipment so
9 that it doesn't occur during these types of projects,
10 is that right?

11 A. Yes.

12 MR. HEALY: That's all I have.

13 EXAMINER WALLACE: Mr. Sullivan?

14 CROSS EXAMINATION

15 BY MR. SULLIVAN:

16 Q. Good morning, Mr. Murray, just a couple
17 questions on the same issues, 101 and 102. In your
18 testimony you rely on language in the Ameritech
19 Interconnectors Collocation Handbook for your
20 position?

21 A. Yes, sir.

22 Q. You will agree with me that the

1 collocation handbook sets forth certain intervals,
2 certain notice provisions, for notifying CLECs of
3 different construction projects, is that right?

4 A. Yes.

5 Q. And the provisions that you cite in
6 relation to Issue 101 and 102, the handbook in each
7 instance refers to these notice provisions where
8 feasible, is that right?

9 A. Yes, sir.

10 Q. Is it your position that that language
11 should also be included in the parties'
12 Interconnection Agreement?

13 A. Yes, sir.

14 MR. SULLIVAN: I have nothing further.

15 EXAMINER WALLACE: Any redirect?

16 MS. STEPHENSON: No, Your Honor.

17 EXAMINATION

18 BY EXAMINER WALLACE:

19 Q. Mr. Murray, when you say an emergency,
20 what would be an example of an emergency that the time
21 limits could be dispensed with?

22 A. Emergency is kind of a broad term in

1 switching equipment and transmission equipment. If
2 you have a duplex system, let's say a fiber terminal,
3 you have a hot side and you have a stand-by side. If
4 the hot side went down and you were running stand-by,
5 you need to come in at night, that night, to get it
6 back up so you don't lose total communications. That
7 is one type of emergency. It is not a critical
8 emergency but it is urgent that it gets done at night
9 during the maintenance window.

10 Another type of emergency would be if,
11 let's say, that fiber terminal went down at noon, both
12 sides went down. Obviously, notification is going to
13 be real short, like I mean after it gets back up
14 usually.

15 Q. In your instance Ameritech would need to
16 bring in people right away, regardless of whether they
17 could notify the CLEC?

18 A. Yes, that's correct.

19 Q. And then the normal run of the mill
20 emergency if there was a fire or something like that,
21 is that also -- I mean, you would consider that an
22 emergency, right?

1 A. Yes.

2 EXAMINER WALLACE: All right. Thank you.

3 MS. STEPHENSON: At this time Staff would
4 move to have Mr. Murray's verified statement, Staff
5 Exhibit Number 2, admitted.

6 EXAMINER WALLACE: All right. Staff Exhibit
7 2.0 is admitted.

8 (Whereupon Staff Exhibit 2 was
9 marked for purposes of
10 identification as of this
11 date and admitted into
12 evidence.)

13 MS. STEPHENSON: I am sorry. Can I correct
14 myself? It's entitled the Revised Verified Statement.

15 EXAMINER WALLACE: All right. The Revised
16 Statement 2.0 is admitted. And you did hand a
17 revised -- you are handing a revised copy --

18 MS. STEPHENSON: At this time Staff would
19 also move to admit as Staff Exhibit Number 4 the
20 various data requests of Russ Murray starting with
21 1.01 through 6.1. We have labeled that Staff Exhibit
22 4.0 A, B, C, D, E and F, and Torsten Clausen's data

1 request which is TC-1.0 through 2.01 which is also
2 part of the Staff Exhibit 4, but it's GNH.

3 MR. SULLIVAN: Is that every single data
4 request that Staff propounded?

5 MS. STEPHENSON: Correct.

6 EXAMINER WALLACE: Let me see what you have
7 got. I am not following what you just said.

8 MS. STEPHENSON: These are just various data
9 requests of Staff throughout the proceedings.

10 MR. HEALY: Does that include the responses?

11 MS. STEPHENSON: No, there is no response in
12 here. We just want it in the record that Staff did
13 ask these questions throughout the proceedings.

14 MR. MACBRIDE: These are the questions and
15 not the answers?

16 MS. STEPHENSON: Correct.

17 MR. SULLIVAN: I suppose I find that a little
18 irregular to have the questions but not the answers in
19 the record. I am not sure how you would use a
20 question without putting the answer in.

21 MS. STEPHENSON: It's just Staff in
22 somebody's testimony had asked some questions that

1 were never answered and, therefore, we never took
2 positions on them, and this is just further
3 documentation that we did ask the questions.

4 MR. SULLIVAN: I think that's sort of
5 creating a non-contextual record.

6 EXAMINER WALLACE: I think so, too. I am not
7 sure I see a reason or the need to put these in.
8 These are data requests that were sent out. If you
9 didn't get responses, that's another issue. If you
10 got responses, that's another issue. So we will mark
11 these as Staff Group Exhibit Number 4 and describe
12 them as various data requests propounded by Staff, and
13 they will not be admitted into the record.

14 (Whereupon Staff Group Exhibit
15 Number 4 was marked for
16 purposes of identification as
17 of this date.)

18 MR. SULLIVAN: Can we go off the record for
19 just a moment?

20 (Whereupon there was then had an
21 off-the-record discussion.)

22 EXAMINER WALLACE: Let's go back on the

1 record. I think that at this time what we have marked
2 as Group Staff Exhibit Number 4 is being withdrawn,
3 and a late-filed exhibit, which just to confuse
4 everyone more we will mark as Staff Exhibit 5, will be
5 submitted which will consist of the various data
6 requests propounded by Staff and answers received by
7 Staff. And whatever accumulation is put together,
8 please circulate it to Ameritech and TDS so that they
9 can agree that that's what they want it in.

10 MS. STEPHENSON: Just for clarification, my
11 only concern was, the reason why we didn't put in the
12 responses was because one of the data requests did ask
13 for proprietary information. So we will withdraw that
14 data request where we ask for proprietary information
15 and not have that one go in. Because the rest of the
16 responses for 6.1 asked for all the proprietary
17 information, so we will just withdraw that data
18 request. That was the reason why we didn't want to
19 put the responses in.

20 EXAMINER WALLACE: To sum up, I am going to
21 put extreme pressure on my court reporter. She's
22 going to get this expedited transcript out next week.

1 We will only have one brief. That will be due July
2 12. I will have the HEPO out July 18. We are going
3 to have a brief on exceptions July 24 and reply briefs
4 on exceptions July 27. Those should also be served
5 electronically on everyone on that day. That's an
6 in-hand date.

7 And I have been advised that it's
8 probably wise to keep this docket open until later, so
9 I will not mark it heard and taken today. Does anyone
10 have anything else to bring up?

11 I just had one quick question. Does it
12 appear that there is still approximately 49 unresolved
13 issues as just a numerical --

14 MR. HEALY: That seems about right.

15 EXAMINER WALLACE: All right. Anything
16 further today? All right. We will be adjourned until
17 a further date.

18 (Whereupon the hearing in this
19 matter was continued until a
20 later date.)

21

22

1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)
CASE NO.: 01-0338
3 TITLE: TDS METROCOM, INC.

4 CERTIFICATE OF REPORTER

5 I, Carla J. Boehl, do hereby certify that I am a
6 court reporter contracted by Sullivan Reporting
7 Company of Chicago, Illinois; that I reported in
8 shorthand the evidence taken and proceedings had on
9 the hearing on the above-entitled case on the 22nd
10 day of June, 2001; that the foregoing pages are a
11 true and correct transcript of my shorthand notes so
12 taken as aforesaid and contain all of the proceedings
13 directed by the Commission or other persons
14 authorized by it to conduct the said hearing to be so
15 stenographically reported.

16 Dated at Springfield, Illinois, on this 27th day
17 of June, A.D., 2001.

18

19

20 Certified Shorthand Reporter

21

22